

Thursday, June 24, 2021

J. Marvin Montgomery
Attorney At Law
151 Antill Drive
Thibodaux, Louisiana 70301-6011

**Re: Louisiana Board of Ethics
Docket No. 2021-178**

Dear Mr. Montgomery:

The Louisiana Board of Ethics ("Board"), at its July 9, 2021 meeting, considered your request for an advisory opinion as to whether the Louisiana Code of Governmental Ethics ("Code") would prohibit your client from hiring or contracting a certified building official/inspector employed by Orleans Parish, Jefferson Parish, or any other parish/municipality, for the provision of private inspection services to be provided outside of the certified building official/inspector's jurisdiction/parish.

FACTS PROVIDED

IECI & Associates, LLC ("IECI") (the client) is a private company that enforces the Louisiana State Uniform Construction Code (La. R.S. 40:1730.21, et seq.), including providing inspections, for commercial contractors, residential contractors, and homeowners under a contract or agreement with contractors or homeowners, as authorized by La. R.S. 40:1730.24(B). The Louisiana State Uniform Construction Code (La. R.S. 40:1730.21, et seq.) does not require third-party inspectors for contractors or homeowners to file inspection reports with a municipality or parish. Likewise, the Louisiana State Uniform Construction Code does not authorize a parish or municipality to either approve or reject any such inspection reports. The municipality or parish accepts the inspection reports as a purely ministerial function, much like a clerk of court accepting acts of conveyance or mortgage. The general purpose of IECI filing an inspection report with a municipality or parish is to provide the municipality or parish and any other interested third party, with the results of the inspection so that any such party may act accordingly.

The inspection work performed by IECI is done through IECI's full time or part time employees or independent contractors. The inspection work is actual bona fide work that an inspector must complete before getting paid. The potential inspectors are mechanical inspectors with Jefferson and Orleans Parishes.

IECI does not have any type of contractual, business, or financial arrangements with either Orleans Parish or Jefferson Parish and is not seeking such an arrangement. IECI does not seek, for compensation, to influence the passage or defeat of legislation by either parish. IECI is not regulated by either parish. The only connection that IECI has with Orleans Parish or Jefferson Parish is the filing of IECI's inspection reports with the proper parish agency. IECI does not have any substantial economic interests, which may be substantially affected by the certified building official/inspector's performance or nonperformance of his official duties with the parish for which the certified building official/inspector is employed.

You have asked the following questions:

1. May a certified building official/inspector, who is employed by Orleans Parish, Jefferson Parish, or any other parish/municipality, perform actual, bona fide, private inspection work for IECI and be compensated for the work, if the work is performed outside of the jurisdiction of the parish/municipality for which the certified building official/inspector is employed?
2. May a certified building official/inspector who is an agency head and employed by Orleans Parish, Jefferson Parish, or any other parish/municipality perform actual, bona fide, private inspection work for IECI and be compensated for the work, if the work is performed outside of the jurisdiction of the parish/municipality for which the certified building official/inspector is employed?

LAW

La. R.S. 42:1111(C)(1)(a) prohibits a public servant from receiving any thing of economic value for any service, the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the agency of the public servant and in which the public servant has participated.

La. R.S. 42:1111(C)(2)(a) provides that no public servant and no legal entity in which the public servant exercises control or owns an interest in excess of twenty-five percent, shall receive any thing of economic value for or in consideration of services rendered, or to be rendered, to or for any person during his public service unless such services are: (d) Neither performed for nor compensated by any person or from any officer, director, agent, or employee of such person, if such public servant knows or reasonably should know that such person has or is seeking to obtain contractual or other business or financial relationships with the public servant's agency; conducts operations or activities which are regulated by the public employee's agency; or has substantial economic interests which may be substantially affected by the performance or nonperformance of the public employee's official duty.

La. R.S. 42:1115(A)(1) prohibits a public servant from soliciting or accepting, directly or indirectly, any thing of economic value as a gift or gratuity from any person or from any officer, director, agent, or employee of such person, if such public servant knows or reasonably should

know that such person has or is seeking to have a contractual, business, or financial relationship with the public servant's agency.

La. R.S. 42:1115(A)(2) prohibits a public servant from soliciting or accepting, directly or indirectly, any thing of economic value as a gift or gratuity from any person or from any officer, director, agent, or employee of such person, if such public servant knows or reasonably should know that such person is seeking, for compensation, to influence the passage or defeat of legislation by the public servant's agency.

La. R.S. 42:1115(B)(1) prohibits a public employee from soliciting or accepting, directly or indirectly, any thing of economic value as a gift or gratuity from any person or from any officer, director, agent, or employee of such person, if such public servant knows or reasonably should know that such person conducts operations or activities that are regulated by the public employees' agency.

La. R.S. 42:1115(B)(2) prohibits a public employee from soliciting or accepting, directly or indirectly, any thing of economic value as a gift or gratuity from any person or from any officer, director, agent, or employee of such person, if such public servant knows or reasonably should know that such person has a substantial economic interest which may be substantially affected by the performance or nonperformance of the public employee's office duty.

CONCLUSION

The Board concluded, and instructed me to inform you, that based on the facts presented, the Code dictates the following answers to your questions:

1. May a certified building official/inspector, who is employed by Orleans Parish, Jefferson Parish, or any other parish/municipality perform actual, bona fide, private inspection work for IEI and be compensated for the work, if the work is performed outside of the jurisdiction of the parish/municipality for which the certified building official/inspector is employed?

Yes. La. R.S. 42:1111(C)(1)(a) prohibits a public servant from receiving any thing of economic value from a nonpublic source for any service that is "devoted substantially to the responsibilities, programs, or operations of the agency of the public servant and in which the public servant has participated." Thus, the Code would prohibit a certified building official/inspector from providing private inspection services within the parish/municipality for which the certified building official/inspector is employed.

However, the Code does not prohibit a certified building official/inspector from providing private inspection services on buildings outside of the jurisdiction of the parish/municipality for which the certified building official/inspector is employed, provided that IEI is not a prohibited source, in accordance with La. R.S. 42:1111(C)(2)(d), and that the provision of private inspection services does not

interfere with the certified building official/inspector's public duties. According to the facts provided, IECl is not a prohibited source.

2. May a certified building official/inspector who is an agency head and employed by Orleans Parish, Jefferson Parish, or any other parish/municipality perform actual, bona fide, private inspection work for IECl and be compensated for the work, if the work is performed outside of the jurisdiction of the parish/municipality for which the certified building official/inspector is employed?

Yes. See the response to Question No. 1.

This advisory opinion is based solely on the facts as set forth herein. Changes to the facts as presented may result in a different application of the provisions of the Louisiana Code of Governmental Ethics. The Board issues no opinion as to past conduct or as to laws other than the Louisiana Code of Governmental Ethics, the Campaign Finance Disclosure Act, the Lobbyist Disclosure Act, and the conflict of interest provisions contained in the Louisiana Gaming Control Law. If you have any questions, please contact me at (800) 842-6630 or (225) 219-5600.

Sincerely,

LOUISIANA BOARD OF ETHICS

LaToya D. Jordan
For the Board

DISCLAIMER
This is a draft opinion and it is NOT an opinion of the Louisiana Board of Ethics. No party may rely on the facts or conclusions. The analysis and conclusions herein are provided for discussion purposes only, and are subject to change or revision at the meeting of the Board of Ethics at which this matter is considered.